

oath or affirmation. Without having the notes of arguments, this Court will be somewhat hamstrung, and in this sense, the situation can be equated with having an incomplete record.

In passing, it is well-established by authorities that normally, an inferior tribunal should not be compelled to supply grounds of decision but we are concerned merely with the notes of arguments on the basis of which the learned Chairman had made the order called in question.

I therefore make an order calling on the learned Chairman of the Appeal Board in question to send in within 14 days, a certified copy of the notes of arguments recorded in Seremban District Appeal Board Appeal No. 1 of 1980.

I will now hear counsel further on the other matter of the preliminary objection mentioned by me earlier.

Order accordingly.

Solicitors: A.K.J. D'Cruz & Co.; N. Ramachandran & Co.

SERPLY SDN. BHD. v. PROTEXA DRILLING (M) SDN. BHD.

[O.C.J. (Zakaria Yatim J.) June 9, 1984]
[Kuala Lumpur — Civil Suit No. C867 of 1983]

Practice & Procedure — Order of attachment — Application to set aside — Failure of plaintiffs to disclose correct information in ex parte application — Order of attachment set aside — Damages allowed — Debtors Act 1957, s. 19(1).

The plaintiffs claimed against the defendants for commission money due to them. The plaintiffs relied on telex DMI which reads as follows:

"THIS WILL CONFIRM OUR AGREEMENT THAT PROTEXA DRILLING (MALAYSIA) SDN. BHD. WILL PAY SERPLY SENDIRIAN BERHAD A COMMISSION OF ONE (1) PERCENT OF REVENUES RECEIVED FROM PETRONAS CARIGALI SDN. BHD. CONTRACT NUMBER 281/60/018 FOR THE SERVICES OF THE DRILLSHIP CORA INCLUDING THE MOBILIZATION PAYMENTS, DAY RATE PAYMENTS FOR THE INITIAL TERM AND ONE YEAR EXTENSION OPTION, IF EXERCISED, AND THE DEMOBILIZATION PAYMENT.

WE ARE DRAFTING A FORMAL AGREEMENT TO THIS EFFECT WHICH WE WILL SUBMIT FOR YOUR REVIEW SHORTLY."

The defendants in this case sought to set aside an order of attachment before judgment made against their property, namely, Bank A/C No. 0-110355-017 at Citi Bank, Kuala Lumpur for a sum not exceeding \$368,044.47. The defendants also sought for damages suffered by them as a result of the attachment and for costs. The defendants contended that (a) the plaintiffs failed to satisfy

A the requirements of section 19(1) of the Debtors Act and (b) the plaintiffs, in their *ex-parte* application for the attachment order, had not fully disclosed material facts and had made inaccurate statements.

Held: (1) since the telex DMI was a complete agreement the plaintiffs therefore had a cause of action against the defendants to recover the commission money due to them;

B (2) however, the question of running away from the jurisdiction of the Court did not arise. The plaintiffs, therefore, failed to show, a *prima facie* case against the defendants in respect of the second requirement of section 19 of the Debtors Act 1957;

C (3) the failure of the plaintiffs to disclose the correct information in their *ex parte* application was a good ground to discharge the attachment order;

(4) the order of attachment dated April 26, 1983 should therefore be set aside;

(5) a date would be fixed for the assessment of damages by the defendants as a result of the attachment;

D (6) the costs of this application should be paid by the plaintiffs in any event.

Cases referred to:

- (1) *Kepong Prospecting Ltd. v. Schmidt* [1962] M.L.J. 375.
- (2) *Datuk Abu Mansor bin Mohamed Nasir v. Bank Kerjasama Rakyat Malaysia Bhd. & Anor.* [1982] 1 M.L.J. 258, 260.
- E (3) *Hari Singh v. Sundarammal* [1965] 2 M.L.J. 174, 175.

CIVIL SUIT.

William Leong for the defendants.
Joseph Loo for the plaintiffs.

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Cur. Adv. Vult.

Zakaria Yatim J.: This is an application by the defendants to set aside an order of attachment before judgment made against their property, namely, Bank Account No. 0-110355-017 at Citi Bank, Medan Pasar Branch, Kuala Lumpur for a sum not exceeding \$368,044.47. The defendants are also asking for damages suffered by them as a result of the attachment and for costs.

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The defendants' application to set aside the attachment order is based on two main grounds: First, the plaintiffs failed to satisfy the requirements of section 19(1) of the Debtors Act; and, secondly, the plaintiffs, in their *ex-parte* application for the attachment order, had not fully disclosed material facts and had made inaccurate statements.

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I I shall now deal with the first ground. Section 19(1) of the Debtors Act states as follows:

"19(1) If it is shown to the satisfaction of the court, at any time after the issue of a writ of summons, by evidence on oath, that the plaintiff has a good cause of action against the defendant, and:

- (a) that the defendant is absent from the State and that his place of abode cannot be discovered;

(b) that service of a writ of summons cannot without great delay or difficulty be effected; or

(c) that the defendant, with intent to obstruct or delay the execution of any judgment which has been or may be made against him, has removed, or is about to remove, or has concealed, or is concealing, or making away with, or handing over to others, any of his movable or immovable property,

the court may order that the property of the defendant, or any part thereof, be forthwith seized or attached by the appropriate officer as a pledge or surety to answer the just demand of the plaintiff, until the trial of the action and satisfaction of any judgment that may be made against the defendant; but such order shall not constitute the plaintiff a secured creditor if the defendant is adjudicated bankrupt."

It has been held in the case of *Kepong Prospecting Ltd. v. Schmidt*⁽¹⁾ that an applicant for an order under section 19(1)(c) must satisfy the Court: (a) that he has a good cause of action and (b) that the defendant with intent to obstruct or delay the execution of any judgment has removed or is about to remove or has concealed or is concealing or making away with or handing over to others any of his movable or immovable property.

Mr. Leong, Counsel for the defendants submitted that the plaintiffs had failed to disclose a good cause of action in their *ex-parte* application. In their statement of claim, the plaintiffs' claim was based on an agreement contained in a telex sent by the defendants to the plaintiffs on November 19, 1981. The affidavit (enclosure 2) in support of the *ex-parte* application also referred to the same telex which was exhibited as DM1. The telex reads:

"THIS WILL CONFIRM OUR AGREEMENT THAT PROTEXA DRILLING (MALAYSIA) SDN. BHD. WILL PAY SERPLY SENDIRIAN BERHAD A COMMISSION OF ONE (1) PERCENT OF REVENUES RECEIVED FROM PETRONAS CARIGALI SDN. BHD. CONTRACT NUMBER 281/60/018 FOR THE SERVICES OF THE DRILLSHIP CORA INCLUDING THE MOBILIZATION PAYMENTS, DAY RATE PAYMENTS FOR THE INITIAL TERM AND ONE YEAR EXTENSION OPTION, IF EXERCISED, AND THE DEMOBILIZATION PAYMENT.

WE ARE DRAFTING A FORMAL AGREEMENT TO THIS EFFECT WHICH WE WILL SUBMIT FOR YOUR REVIEW SHORTLY."

According to Mr. Leong, the telex did not constitute an agreement because, in the second paragraph, it was stated that a formal agreement would be prepared for review by the plaintiffs. He said that a formal agreement was subsequently concluded and this formal agreement was attached to the defendants' affidavit (enclosure 11) as exhibit MS 3. Also attached to the same affidavit were two telexes exhibited as MS1 & MS2.

In my opinion the telex (DM1) is a complete agreement. The telex clearly states that the defendants would pay the plaintiffs one percent commis-

A sion for their services. There was no formal agreement subsequently concluded between the plaintiff and the defendants. The agreement exhibited by the defendants, MS3, was concluded between the defendants and a third party, Bassoe Offshore Partners Ltd. and it made no reference to the one percent commission payable to the plaintiffs. Similarly, the two other telexes MS1 and MS2 made no reference to the amount of commission to be paid by the defendants to the plaintiffs. It was only in the affidavit of the defendants (enclosure 11) that reference was made to the commission. Paragraph 7 of the affidavit stated that the defendants would pay the plaintiffs 0.82% through Bassoe Offshore Partners Ltd. and the other 0.18% would be paid to the plaintiffs upon the plaintiffs writing to the defendants' parent company at Houston, Texas, U.S.A. This paragraph merely mentioned the mode of payment to be made by the defendants to the plaintiffs but it confirmed that the defendants had to pay the one percent commission to the plaintiffs. The defendants' affidavit (enclosure 11) thus confirmed what is stated in the telex DM1 and it is my view that DM1 is a complete agreement. Since DM1 is a complete agreement, the plaintiffs, therefore, have a cause of action against the defendants to recover the commission money due to them.

E With regard to the second requirement of section 19 of the Act, the plaintiffs stated in their affidavit (enclosure 2, paragraph 9) that "the Defendants, with intent to obstruct or delay the execution of any judgment that may be made against them, are about to remove or making away with the handing over to others any of their assets." The reason for this allegation was that the defendants were in the process of making arrangements to cease business. In their affidavit in reply (enclosure 15) the plaintiffs further stated that a notice issued by the defendants regarding the shifting of their office from Malaysia to Singapore prompted the plaintiffs to apply for the attachment order. The defendants, however, denied the allegations made by the plaintiffs. In their affidavit (enclosure 11), they said that if there was any intention of obstructing or delaying the execution of judgment, such notice would not have been issued especially to the plaintiffs. A copy of the notice was exhibited as MS4. In the notice the defendants stated: "We wish to inform you that with effect from April 15, 1983 our new address will be" in Singapore. No date was given as to when this notice was issued but it must have been issued before April 15, 1983. It can be inferred, therefore, that the decision to move to Singapore was before the date stated in the notice. The writ (enclosure 1) was filed on April 15, 1983. It was served on the defendants together with the attachment order on May 3, 1983. The defendants only came to know of the writ and the order when it was served on them. They could not have known of the writ when the notice to shift their office to Singa-

pore was issued. Thus, the question of running away from the jurisdiction of the Court did not arise. The plaintiffs, therefore, failed to show a *prima facie* case against the defendants in respect of the second requirement of section 19 of the Act.

I shall now turn to the second ground in support of the defendants' application, namely, that the plaintiffs had not fully disclosed material facts and had made inaccurate statements in their *ex-parte* application. In *Datuk Abu Mansor bin Mohamed Nasir v. Bank Kerjasama Rakyat Malaysian Bhd. & Anor.*⁽²⁾, the Federal Court decided on an appeal arising from an *ex-parte* order of attachment before judgment under section 19(1)(c) of the Debtors Ordinance. Azmi J., as he then was, in delivering the judgment of the Court, said,

"But this 1976 transfer, which could have been discovered from the Land Office Registry, was not disclosed to the learned judge when the *ex-parte* order was made, and as such he could not have exercised his discretion in matters unknown to him..."

Similarly, in *Hari Singh v. Sundaramma*⁽³⁾, MacIntyre J. said,

"It is also settled law that on an *ex-parte* application, the person making the application should show the utmost good faith by not holding back any vital information touching upon matters pertinent to the application..."

The failure to mention that fact when the application for an *ex-parte* order was made is alone sufficient reason for me to discharge the order..."

In the instant case, the plaintiffs had failed to disclose the true facts by making inaccurate statements in the affidavit (enclosure 2) in support of the *ex-parte* application. The plaintiffs alleged, in paragraph 9(d) of that affidavit, that the defendants' company had a paid-up capital of \$2.00. The defendants in their affidavit (enclosure 11) stated that the paid-up capital of the defendant company was \$200,000.00. The plaintiffs in their affidavit in reply (enclosure 15, paragraph 12) changed their story and stated that the authorised capital of the defendants' company was \$25,000.00. The failure of the plaintiffs to disclose the correct information in their *ex-parte* application is a good ground to discharge the attachment order.

For the reasons stated above, I order that:

(1) the order made by me on April 26, 1983 that the attachment before judgment be given against the defendants' property, namely Bank Account No. 0-110355-017 at Citi Bank, Kuala Lumpur for a sum not exceeding \$368,044.47 be set aside;

(2) a date be fixed for the assessment of damages suffered by the defendants as a result of the attachment; and

A (3) the costs of this application be paid by the plaintiffs in any event.

Order accordingly.

B Solicitors: Joseph Tan & Tang; Tunku Zuhri; Manan & Abdullah.

RE MUTANG TAGAL

C [O.C.J. (Wan Hamzah J.) July 13, 1984]
[Kuala Lumpur — Petition for Admission as an Advocate & Solicitor No. 113 of 1983]

Legal Profession — Advocate and solicitor — Petition for admission as — Scope of Legal Profession Act, 1976, s. 13(1) — Legal Profession Act, 1976, ss. 3 & 13(1).

D The words "advocate and solicitor" in section 13(1) of the Legal Profession Act 1976 include an advocate called to the Sarawak Bar under the Advocates Ordinance of Sarawak because such interpretation would facilitate the intention of the legislature to treat Sabah, Sarawak and West Malaysia as one country for the purpose of pupillage.

[Editorial Note: An appeal to the Federal Court has been allowed.]

E Case referred to:

(1) *Samantha Murthi v. Attorney-General* [1982] 2 M.L.J. 126.

PETITION.

F Lee Beng Choon for the petitioner.
Param Kumarasamy for Bar Council.
Dulip Singh for the Bar Committee.
Miss Mary Lim for the Attorney-General.

Cur. Adv. Vult.

G Wan Hamzah J.: Mutang Tagal petitions for admission to the Bar in West Malaysia under the Legal Profession Act 1976. He has not been a pupil of an advocate and solicitor practising in West Malaysia, but he attended the chambers of Mr. Peter Chin Fah Kui at Miri, Sarawak for a period of twelve months from February 23, 1981 to February 23, 1982. Mr. Peter Chin Fah Kui was not an advocate and solicitor called to the Bar in West Malaysia under the Advocates and Solicitors Ordinance 1947 of West Malaysia or under the Legal Profession Act 1976, but he was an advocate called to the Sarawak Bar under the Advocates Ordinance of Sarawak before the Act came into operation. The Bar Council of West Malaysia objects to this petition and contends that the Petitioner has not complied with section 13 of the Act in that he has not served the required period of pupillage with an advocate and solicitor on the ground that Mr. Peter Chin Fah Kui was not an advocate and solicitor under section 13 of the Act,